

COMMON MEDIA ISSUES RELATING TO RETAIL ALCOHOLIC BEVERAGE LICENSES

A. Price, Items/"Happy Hour"

Retail licensees may advertise the sale and service of alcoholic beverages. They may advertise drink prices, brand names (provided they are paying the entire cost for the ad), promotions, and "happy hour" information (prices, times, brands, etc.). While drinks may be advertised at reduced prices, these specially-priced drinks cannot be made available only to certain groups of persons (e.g., Ladies' Night specials). This violates Section 125.6 of the CA Business and Professions Code.

B. Free/Complimentary Alcoholic Beverages

Retailers cannot offer complimentary or free alcoholic beverages, but may offer packages that include alcoholic beverages, provided the total charge to the customer covers their cost of acquisition (to prevent a free goods violation.)

C. "2 for 1," Buy 1, Get 1 Free,"

Retailers cannot offer alcoholic beverages for on-premises consumption at "two for the price of one," "buy one, get one free," "all you can drink," or under any other scheme where the express or implied meaning is that a customer, in order to receive a reduced price, would be required to purchase more than one drink at one time.

D. Retailer Responsibility

The retail licensee is responsible for all activities at their licensed premises, whether or not a radio station indicates that they are "hosting" an event at the licensed premises.

E. Non-Retailer Advertising Permitted

Manufacturers, importers and distributors (wholesalers) of alcoholic beverages may use broadcast media to advertise their products provided such advertising does not violate any statutory provision in the Alcoholic Beverage Control Act or business regulations of the Department of Alcoholic Beverage Control.

F. Retailer/Non-Retailer "Joint Promotions" Not Permitted

Non-retailers are prohibited from advertising in conjunction with retail licensees and from cooperatively paying for any ad with a retail licensee.

G. "Tied-House" Statutes

Sections 25500, 25501, and 25502 prohibit suppliers of alcoholic beverages (e.g., brewers, distillers, winegrowers, importers, distributors, etc.) from furnishing, giving or lending money or other thing of value, directly or indirectly, to a retail licensee or his/her employee(s).

H. Use of Retailer Name in Non-Retailer Advertising Prohibited

California's tied-house statutes and Rule 106, CA Code of Regulations, prohibit joint (cooperative) advertising between a supplier and a retailer. A radio or television station affiliated with an alcoholic beverage supplier, acting in conjunction with or on behalf of the supplier, and/or are being compensated in any way by the supplier, is considered to be an agent of the supplier. As the agent of the supplier, any unlawful activity committed by the unlicensed media entity will be imputed to the alcoholic beverage supplier as if the supplier had directly committed the violation.

I. Brand Name May Be Included in Retailer Advertising

A retail licensee may include the brand name of a beer, wine, or distilled spirits in its advertising provided that the retailer has not been compensated in any way, directly or indirectly, by the manufacturer, importer or distributor of that particular alcoholic beverage.

J. Event Promotion by a Non-Retail Licensee

Alcoholic beverage suppliers cannot advertise an event to take place at a retailer's premises, or arrange to have their brand in the title of a retailer's event as a result of a purchase, trade, or *other arrangement*. *Other arrangement* would include "promo" mentions promised the alcoholic beverage supplier as part of an ad buy. If a supplier directs a station to tie its brand name to a retailer event, the station is acting as an agent of the supplier, even if no money exchange or trade has occurred. This would be considered "joint advertising" and is prohibited.

K. Event Sponsorship by Non-Retail Licensee at Retail Premises

Generally, suppliers of alcoholic beverages cannot sponsor events at retail licensed premises. There are some statutory exceptions contained in the ABC Act for particular venues, such as certain arenas, stadiums, etc. Also, where the retail licensee is not the venue owner or operator (e.g., the retailer is a concessionaire only) alcoholic beverage suppliers may pay money to advertise the venue.

L. Sponsorship of station Concert Hotlines by Non-Retailers

Alcoholic beverage suppliers cannot buy title sponsorship of "Hot Lines" or "Event Lines" from radio stations, which listeners call to hear a listing of events at retail locations, nor may they be referenced as a sponsor of such "Lines."

M. Non-Retail Licensee Sponsored Contests

Alcoholic beverage suppliers may advertise contests or sweepstakes promotions, noting that entry forms "are available wherever their products are displayed," or in other generic terms, but cannot identify specific retail-licensed locations.

N. Prize Limitations

Rule 106 of the CA Code of Regulations limits the monetary value of prizes given away in contests or sweepstakes sponsored by non-retail licensees (e.g., \$0.25 if beer-related; \$1.00 if wine-related; and \$5.00 if distilled spirits-related.) Retail licensees must also adhere to these monetary limitations if the sweepstakes or contest is done in connection with the advertising of the retailer's alcoholic beverage business.

Section 25600 of the ABC Act prohibits licensees from, directly or indirectly, giving any premium, gift of free goods in connection with the sale or distribution of an alcoholic beverage. The California Court of Appeal ruled in 1988 that "distribution" includes advertising or promoting as well as the merchandising of alcoholic beverages. Stations who advertise contests or sweepstakes on behalf of a retailer or supplier cannot giveaway prizes whose values exceeds the rule's monetary limits, regardless if the station has paid for the prizes because the station is acting as the *agent* of the licensee and, therefore, the licensee will have *indirectly* given away the ineligible prize.

Any station having questions about alcoholic beverage advertising by either retail or non-retail licensees, particularly if the advertisement potentially ties-in a retail licensee and a supplier, may contact the Department of Alcoholic Beverage Control, Business Practices Unit, 3927 Lennane Drive, Suite 100, Sacramento, CA 95834; Telephone (916) 419-2500; Fax (916) 419-2599; email: cust.serv@abc.ca.gov